

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CSX TRANSPORTATION, INC.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-00338 (EGS)
)	
WILLIAMS <i>et al.</i>)	
)	
Defendants.)	

**STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE**

1. The District of Columbia is a municipal corporation, established by Congress as authorized by the United States Constitution, Art. I, § 8, cl. 17, by Act of Feb. 21, 1871, ch. 62, § 1, 16 Stat. 419.
2. The Council of the District of Columbia (“D.C. Council”) passed the Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005, Bill 16-77 (the “District Act”) on February 1, 2005. District Act certification record (attached to District Act (Ex. 3 to P.I. Mem.¹)).
3. Mayor Anthony A. Williams signed the District Act into law on February 15, 2005. District Act (Ex. 3 to P.I. Mem.).
4. The District Act prohibits transport of four specified classes of hazardous materials (the “Banned Materials”), and transport of rail cars capable of containing and marked to indicate such materials, within the so-called “Capitol Exclusion Zone” (defined as the area “within 2.2 miles of the U.S. Capitol Building,” District Act § 3)

¹ Plaintiff CSX Transportation, Inc.’s Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction (filed and served Feb. 22, 2005).

without a permit issued by the District of Columbia Department of Transportation (“DCDOT”). District Act § 4 (Ex. 3 to P.I. Mem.).

5. CSX Transportation, Inc. is a major freight railroad that owns and operates over a rail network east of the Mississippi River of more than 21,000 route miles in 23 states, the District of Columbia and two Canadian provinces (from Illinois in the northwest to Massachusetts in the northeast to Florida in the southeast to Louisiana in the southwest). Affidavit of John M. Gibson, Jr. (Feb. 16, 2005) (“Gibson Aff.”) (Ex. 1 to P.I. Mem.) at ¶ 13.

6. The Banned Materials are lawfully manufactured and used in the United States of America. *See* 49 C.F.R. Parts 171-180.

7. The United States Government has expressed the view that the Banned Materials are essential to the economy, health and welfare of the United States. *See* Notice, Hazardous Materials: Transportation of Explosives by Rail, 68 Fed. Reg. 34,470, 34,472 (June 9, 2003); Notice, Hazardous Materials: Enhancing Rail Transportation Security for Toxic Inhalation Hazard Materials, 69 Fed. Reg. 50,988, 50,988 (Aug. 16, 2004).

8. Among the Banned Materials are propane and chlorine. Propane is used for residential heating, hot water and cooking. Chlorine is necessary for water treatment, among other uses. Gibson Aff. (Ex. 1 to P.I. Mem.) at ¶¶ 10-11.

9. It is lawful to transport the Banned Materials in interstate commerce, provided the transporter complies with all applicable federal regulations. *See* 49 C.F.R. Parts 171-180 (federal regulations governing transport of hazardous materials, including the Banned Materials).

10. As a common carrier, CSXT has a statutory duty under present law to transport goods and materials, including the Banned Materials, upon reasonable request by a shipper. *See* 49 U.S.C. § 11101.

11. A CSXT north-south main line (the “I-95” line) runs along the eastern seaboard from Florida to New York and New England and passes through the Capitol Exclusion Zone. *Gibson Aff.* (Ex. 1 to P.I. Mem.) at ¶¶ 6, 15.

12. A CSXT east-west main line (the “B&O” line) connecting the Mid-Atlantic region (southeastern Pennsylvania, Delaware, Maryland, and northern Virginia) with points west as far as the Mississippi River also passes through the Capitol Exclusion Zone. *Gibson Aff.* (Ex. 1 to P.I. Mem.) at ¶¶ 6, 15.

13. Since both CSXT lines in the District of Columbia pass through the Capitol Exclusion Zone, the District Act, by design and effect, prohibits any rail transportation of the Banned Materials in the District of Columbia without a permit from the DCDOT. *Compl.* ¶¶ 58-75.

14. CSXT has for decades regularly transported rail cars containing Banned Materials, including both loaded and unloaded cars, on its north-south and east-west main lines through the District of Columbia. *Gibson Aff.* (Ex. 1 to P.I. Mem.) at ¶ 20; CSXT System Map (Ex. 1 to *Gibson Aff.*).

15. CSXT does not originate or terminate any shipments of the Banned Materials in the District of Columbia. All shipments are interstate shipments passing through the District en route to destination. *Gibson Aff.* (Ex. 1 to P.I. Mem.) at ¶ 7.

16. If CSXT is prohibited from transporting the Banned Materials through the District of Columbia, it would have to use alternative routes that would add hundreds of

miles and days of transit time to the trip. The alternative routings would also increase the number of times a car must be handled and the dwell time in yards. Gibson Aff. (Ex. 1 to P.I. Mem.) at ¶¶ 30-40; CSXT System Map (Ex. A to Gibson Aff.).

17. With respect to its north-south line, the closest alternative CSXT route is a line that runs west of the Appalachian Mountains through Tennessee, Kentucky and Ohio. The closest alternative CSXT east-west route to the north is a line that runs from Albany, New York to Buffalo, New York and thence along Lake Erie through Cleveland, Ohio. The closest alternative CSXT east-west route to the south is a line that runs from Richmond, Virginia to Charleston, West Virginia and points west. Gibson Aff. (Ex. 1 to P.I. Mem.) at ¶¶ 33-36; CSXT System Map (Ex. A to Gibson Aff.).

18. The longer distances and increased number of handlings would increase the time required for a rail car carrying the Banned Materials to complete the cycle from shipper to receiver and back to shipper. Gibson Aff. (Ex. 1 to P.I. Mem.) at ¶¶ 50-54.

19. Longer transit distances and times, and increased car handlings and dwell time, are factors that tend to increase the inherent risk of transporting hazardous materials. Statement of Interest of the United States of America (filed and served Feb. 25, 2005) (“U.S. Statement”) at 8-9; Gibson Aff. (Ex. 1 to P.I. Mem.) at ¶¶ 23-25.

20. A prohibition on transport of the Banned Materials through the District would increase the number of rail cars of Banned Materials being transported through other communities on the alternative routes. Gibson Aff. (Ex. 1 to P.I. Mem.) at ¶ 55.

21. These communities include metropolitan areas, such as Cincinnati, Cleveland, Buffalo, Rochester, Syracuse, Albany and the northern New Jersey/New York

City metropolitan area. Gibson Aff. (Ex. 1 to P.I. Mem.) at ¶¶ 33-36, 55; CSXT System Map (Ex. A to Gibson Aff.).

22. A prohibition on transport of the Banned Materials through the District would preclude CSXT from utilizing its rail network, equipment and personnel in the most efficient manner, decreasing its capacity and flexibility to transport freight. Gibson Aff. (Ex. 1 to P.I. Mem.) at ¶¶ 30-32.

23. Other local jurisdictions have expressed interest in passing their own local laws banning the transport of hazardous materials if the District Act is upheld. *See, e.g.*, John Gallagher, *Pittsburgh Eyes Hazmat Ban*, Traffic World, Mar. 7, 2005; City Council's Resolution to Hold Investigative Hearings into CSX Railroad's Operations in Philadelphia (Feb. 17, 2005) (Ex. 6 to Memorandum of Points and Authorities in Support of CSXT's Motion for Summary Judgment).

24. It would not take many local bans effectively to eliminate all rail routing options for hazardous materials within the scope of those laws. Gibson Aff. (Ex. 1 to P.I. Mem.) at ¶ 57.

25. The United States Department of Justice, on behalf of the Departments of Homeland Security and Transportation, filed a Statement of Interest on February 25, 2005 stating that the District Act conflicts with federal regulations governing hazardous materials transportation, is preempted under the Supremacy Clause, violates the Commerce Clause, and negatively affects the United States' interests in national security, public safety, public health, and a strong economy.

Respectfully submitted,

Dated: March 8, 2005

_____/s/ Mary Gabrielle Sprague

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